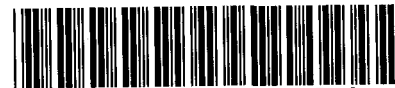


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AZ CORP COMMISSION  
DOCKET CONTROL

**BEFORE THE ARIZONA CORPORATION COMMISSION**

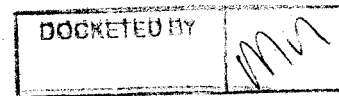
**COMMISSIONERS**

**KRISTIN K. MAYES, Chairman**  
**GARY PIERCE**  
**PAUL NEWMAN**  
**SANDRA D. KENNEDY**  
**BOB STUMP**

Arizona Corporation Commission

**DOCKETED**

MAY - 3 2010



GEORGE BIEN-WILLNER,

Complainant,

**DOCKET NO. E-01345A-10-0136**

vs.

**ANSWER TO FORMAL  
COMPLAINT**

ARIZONA PUBLIC SERVICE COMPANY,

Respondent.

Respondent Arizona Public Service Company ("APS") denies everything in the Formal Complaint ("Complaint") of George Bien-Willner, except that which is specifically admitted or qualified.<sup>1</sup>

**SPECIFIC RESPONSES TO COMPLAINT**

The Complaint claims that there are "erratic/incorrect and possibly self-serving meter reading and billing practices" at a business known as the 260 Café in Payson, Arizona. More specifically, the Complaint alleges that for the period November 2007 through December 2008, the 260 Café was closed and could not have used the electricity

<sup>1</sup> The Complaint references two businesses, the "260 Café" and the Sterling International Hotel, so it is less than clear to APS who is the actual Complainant. However, both of these business accounts are, or were during the relevant period of time, in the individual name of Mr. Bien-Willner, and the notice of the Complaint received from the Arizona Corporation Commission ("Commission") on April 15, 2010, identifies Mr. Bien-Willner as the Complainant.

1 for which Mr. Bien-Willner was billed. APS offers the following allegation responses and  
2 factual information in support of its request that the Commission deny the Complaint.

3 **APS Response No. 1:**

4 APS installed meter #G90705 at the 260 Café on August 26, 2005 in the presence of  
5 Commission Staff members Ms. Connie Walczak and Mr. Prem Bahl. Prior to installation,  
6 meter #G90705 was tested by APS and found to register 0.0% on full load (completely  
7 accurate) and -0.2% on light load (slightly slow). *See Exhibit A.*

8 **APS Response No. 2:**

9 With two exceptions (February and December of 2008), the 260 Café meter was  
10 probe read by an APS meter reader during the period referenced in the Complaint. As was  
11 noted by the Commission in Decision No. 71311 (October 30, 2009), once a meter is  
12 probed, it is impossible to thereafter tamper with or otherwise affect the meter read or the  
13 transfer of such read to the APS's billing system. *Id.* at 6. In the two instances when a meter  
14 read could not be obtained because of weather conditions limiting access to the property,  
15 APS followed the estimation procedures set forth in Service Schedule 8.

16 **APS Response No. 3:**

17 After receipt of Complainant's Complaint, APS again tested meter#G90705. The  
18 meter tested -0.2% on both full and light load. This test reading means the meter is running  
19 slightly slow but within the limits established by the Commission in A.A.C. R14-2-210 (E)<sup>2</sup>.  
20 *See Exhibit B.*

21 **APS Response No. 4:**

22 APS is without sufficient knowledge or information to respond to the allegation that  
23 the 260 Café was closed during the months at issue, but APS does concede that usage for  
24 that account during such months was substantially lower than in at least some prior or later  
25 months.

26  
27  
28  

---

<sup>2</sup> *See also APS Service Schedule 1, Section 6.4.1.*

1       **APS Response No. 5:**

2       Unless APS is authorized to render an estimated bill in accordance with the  
3 provisions of Service Schedule 8, APS is required to bill Complainant based upon its  
4 registered and metered electric consumption per A.A.C. R14-2-209 (B) and R14-2-210 (A)  
5 (1).

6       **APS Response No. 6:**

7       Complainant is disputing some portion of \$4,785.55 in APS billings for the 260 Café.  
8 The present amount owed by Complainant to APS for consumption at that service location  
9 is \$17,444.99.

10       **APS Response No. 7:**

11       On April 30, 2009, APS received a final judgment from Maricopa County Superior  
12 Court for \$13,479.56 due and owing from Complainant to APS for the 260 Café Account  
13 for the period running through December 31, 2008.

14                               **AFFIRMATIVE DEFENSES**

15       1.     Complainant fails to state a claim upon which relief can be granted.

16       2.     At all times, APS acted in conformance with its lawfully approved tariffs;  
17 Arizona Administrative Code, Title 14, Chapters 2; and all applicable state and federal laws  
18 with reference to the billings to Complainant for the 260 Café.

19       3.     Under A.A.C. R14-2-210, a customer is obligated to pay bills for utility  
20 service that is rendered on the basis of accurate meter reads.

21       4.     Complainant's dispute of APS billings for the 260 Café prior to April 8, 2008  
22 is barred by the two year statute of limitations set forth in A.R.S. Section 40-248.

23       5.     Complainant's dispute of APS billings for the 260 Café prior to January 1,  
24 2009 (the entire period covered by the Complaint) is barred by the doctrines of *res judicata*  
25 and collateral estoppel.

26                               \*                       \*                       \*                       \*                       \*

27       **WHEREFORE**, Respondent APS requests a declaration from the Commission as  
28 follows:

1           1.     declaring that the bills for electric service from APS to Complainant were not  
2 erroneous; and

3           2.     dismissing Complainant's Complaint with prejudice without any relief being  
4 granted to Complainant.

5           RESPECTFULLY SUBMITTED this 3rd day of May 2010.

6  
7                   PINNACLE WEST CAPITAL CORPORATION  
8                   LAW DEPARTMENT

9           By: 

10                   Thomas L. Mumaw

11                   Attorney for Arizona Public Service Company

12           ORIGINAL and thirteen (13) copies  
13 of the foregoing filed this 3rd day of  
14 May 2010, with:

15           Docket Control  
16           ARIZONA CORPORATION COMMISSION  
17           1200 West Washington Street  
18           Phoenix, Arizona 85007

19           AND copies of the foregoing mailed, hand-delivered,  
20 faxed or transmitted electronically this 3rd day of  
21 May 2010 to:

22           David A. Rubin, Esq.  
23           George Bien-Willner

24   
25  
26  
27  
28

# Exhibit A

Meter Information System [Update Meter Tests]

File Edit Tests Window Help

Owner APS

Meter Number  Manufacture # 030282244

Test Details | Meter Information | Notes

Tester 1  2  Type ☐ Field ☒ Shop ☐ Complaint F/S Test Date 07/30/2005

Test Equipment TB11 - RFL5800

Test Reason Type ROUTINE/RECONDITION

Reason Code

Status  Retire

Read

No	Read	Registration/Percentage of Error (e + 0.1)	As Found	As Left	Demand Meter
1	No Read	FL%	0.0	FL%	0.0
2	0.0	PF%		PF%	
3		LL%	-0.2	LL%	-0.2
4					

Reconfigure

Code  Program ID

Remark

25 rev ck good/no creep/mtr ok

Burden Test Result

CT Number	Result

start  NUM

# Exhibit B

**Meter Information System [Update Meter Tests]**

File Edit Tasks Window Help

Owner: APS

Meter Number:  Manufacturer #: 030282244

Test Details | Meter Information | Notes

Tester: 1  2  Type: ☒ Field ☐ Shop ☒ Complaint F/S Test Date: 04/14/2010

Test Equipment: UNKNOWN - UNKNOWN ☐ Return in Shop

Test Reason Type: COMPLAINT

Reason Code:

Status: 1 - SET

Read		Registration/Percentage of Error (i.e. +0.1)		Demand Meter	
No	Read	As Found	As Left	AS Found KW%	AS Left KW%
1	69218	FL% -0.2	FL% -0.2		
2	20.500	PF% 0.0	PF% 0.0		
3		LL% -0.2	LL% -0.2		
4					

Reconfigure: Code:

Remark:

RM-17-01 (S/N 801982) TEST SET. METER TESTED WELL WITHIN APS AND ACC LIMITS. SEAL TO SERVICE WIRE COVER WAS MISSING. ALL OTHER SEALS WERE O.K. METER REGISTRATION IS ACCURATE AS WELL. METER INTERNAL PROGRAMS ARE CORRECT. METER IS GOOD.

Burden Test Result:

CT Number	Result

start  NUM